to the rights of the garnishing creditor, then garnishment amounts to nothing as a remedy. These courts accordingly hold that the service of the garnishment summons relieves the garnishee from his obligation to proceed with the performance of his contract until the rights of the parties are determined by the court. *Landa* v. *Holck*, 129 Mo. 663, 31 S. W. 900, 50 Am. St. Rep. 459; *First Nat. Bank of Davenport* v. *The Davenport & St. Paul R. Co.*, 45 Ia. 120; *Adams* v. *Scott*, 104 Mass. 164; *Cook* v. *Coleman*, 167 Mass. 414, 45 N. E. 913, 57 Am. St. Rep. 465.

Other cases hold that if the garnishee does dispose of the goods in his possession belonging to the debtor, then he acts at his peril and must answer for the value of the goods. *Lee & Anderson* v. *Louisville & N. R. Co. et al.*, 2 Ga. App. 337, 58 S. E. 520; *Aldrich* v. *Woodcock and Trustees*, 10 N. H. 99; *Dow* v. *Taylor*, 71 Vt. 337, 45 Atl. 220, 76 Am. St. Rep. 775.

It seems rather inconsistent to say that the garnishee must perform his contract, and then say that he must answer for the value of the goods upon the determination of the garnishment proceeding, for the contract may have required that the goods be disposed of at a time when their full value could not be realized. Yet it would seem that the garnishee must answer for this loss and must account to the garnishing creditor for the full value of the goods.

In view of the above authorities we think that the better rule, and the rule supported by the weight of authority, is that the service of the garnishment summons relieves the garnishee from his obligation to proceed with the performance of his contract until the court shall determine the rights of the parties to the proceeding, and that, in fact, it is the duty of the garnishee to hold the goods in his possession to await the determination of the court. J. F. B.

THE POLICE POWER, BILLBOARDS AND SKY SIGNS.—The building code of the City of New York, § 144, provides that any sign or advertising device, supported or attached, over or above any building, etc., shall be deemed a "sky sign," and prohibits such signs from being constructed more than nine feet above the front wall of any building at any part. The relator sought to erect a sign on a building to a greater height than allowed by the ordinance, and applied for a writ of mandamus to compel defendant, the superintendent of streets of the City of New York, to consider an application for a permit. *Held*, that the ordinance constituted a "taking of property without compensation." *People ex rel. M. Wineburgh Advertising Co.* v. *Murphy*, 113 N. Y. Supp. 855.

This decision is in accord with the weight of authority, but that there is a good argument on the other side appears from the fact that in the lower court the justice decided in favor of the constitutionality of the ordinance, and in this court the justices are divided three to two; that numerous ordinances of like nature have been passed in other cities, and that the circuit court of the United States for the southern district of California decided in favor of the constitutionality of a similar ordinance, forbidding

the erection of billboards to a greater height than six feet above the surface of the ground. In *Re Wilshire,* 103 Fed. 620, the decision is based upon the fact that the ordinance puts an arbitrary limit upon the height of sky signs, no matter how safely and strongly built, and braced, and approves of those ordinances, and the cases in support thereof, which limit the erection of signs or billboards to a certain height without a permit first obtained. *Rochester* v. *West,* 164 N. Y. 510; *Whitmier & Filbrick* v. *Buffalo,* 118 Fed. 773.

When municipalities pass ordinances forbidding the erection of sky signs or billboards over a certain height, or to be built within a certain distance from the sidewalk, they are exercising the police power granted to them by the state; and more particularly the power to provide for the public safety. Whether these ordinances will stand under the constitutional provisions that private property must not be appropriated to a public use without just compensation must depend upon whether they are reasonable, i. e., whether they do "in some plain, appreciable and appropriate manner tend towards the accomplishment of the object (public safety) for which the power is exercised."

Prohibitory "billboard ordinances" have been declared invalid because they fixed a maximum height or forbade the placing of billboards or other structures used for advertising purposes within a certain distance from the sidewalk, regardless of stability of structure. *City of Passaic* v. *Paterson Bill Posting Co., 72* N. J. L. 285; *Crawford* v. *City of Topeka,* 51 Kan. 756; *City of Chicago* v. *The Gunning System,* 114 Ill. App. 377; *City of Chicago* v. *The Gunning System,* 214 Ill. 628. The reasoning of these and the principal case appears in the main to be correct. Prohibitory billboard and sky sign ordinances have been passed because of the fragile structure of the ordinary billboard or sky sign, and that some kind of protective legislation is necessary is manifest. However, the magnitude of the advertising business at the present day should, if there were no other reason, entitle this question to a careful consideration.

While the ordinary billboard is a flimsy structure, there is needed no great flight of the imagination to conceive of an advertising company that would be willing, if it could find a vacant lot peculiarly desirable, say opposite a baseball park or theater, to erect a sign as safe and secure as the average business block and pay well for the privilege. To place an arbitrary limit of six or nine feet upon such a structure would appear to be a blow at the business of advertising rather than a public safety measure.

An interesting phase of this question is brought up by what might be termed "æsthetic legislation." Ordinances and park commissioners' rules have been passed seeking to keep the billboard out of the residence districts and away from the boulevards and public parks. These ordinances have universally been condemned as infringements of property rights. *City of Chicago* v. *The Gunning System,* 114 Ill. App. 377; *City of St. Louis* v. *Hill,* 116 Mo. 527; *Commonwealth* v. *Boston Advertising Co.,* 188 Mass. 348. See 4 MICH. LAW REV. 385.

We concur in the prophecy of the learned judge who said "the time will

come * * * when the beauty created by the expenditure of millions of the public funds will not be allowed to be disfigured by vast billboards portraying the virtues of particular brands of whiskeys, or of medicines which work while you sleep." (See FREUND, POLICE POWER, § 182.) M. F. S.

HOW FAR THE RECORD OF VOTING MACHINES IS CONCLUSIVE.—In *People ex rel. Deister* v. *Wintermute,* — N. Y. —, 86 N. E. 818 (1909), the Court of Appeals of New Work expresses itself upon a few troublesome phases of the law relative to voting machines. The main question before the court was as to how far the record of voting machines is conclusive. But before considering this question we notice first another and even more interesting aspect of the case bearing upon the constitutionality of the use of these machines. Although upon this latter point the court was regrettably non-committal, the fair inference from the opinion is that it regards the use of voting machines as constitutional.

The voting machine is not yet beyond the experimental stage. It has still to prove its raison d'être. Just as the Australian ballot was contested and primary elections, so now the voting machine in its turn is being assailed as an innovation upon the letter of the law. The objection was first raised that voting by machine was not a "ballot" within the terms of the constitution providing for voting by ballot. But the courts promptly met this objection with the argument that although a vote by machine is admittedly not a ballot in the literal sense, the constitution does not employ the term literally, but only for the purpose of designating a method of conducting elections which would insure secrecy and the integrity of the ballot. *In re McTammany* (1897), 19 R. I. 729, 36 L. R. A. 547; *Detroit* v. *Inspectors of Election,* 139 Mich. 548, 69 L. R. A. 184; *Linch* v. *Mallory,* 215 Ill. 574, 74 N. E. 723; *United States Standard Voting Machine Co.* v. *Hobson,* 132 Ia. 38, 7 L. R. A. (N. S.) 512, and particularly *Elwell* v. *Comstock,* 99 Minn. 261, 7 L. R. A. 621; see also note to this latter case. That a vote by machine is a ballot, then, seems pretty well settled. Is it, however, a "written ballot" within the constitutional provisions requiring such? This question seemed to have perplexed the Massachusetts Supreme Court in *In re House Bill,* 178 Mass. 605, 54 L. R. A. 430, where the judges divided upon it. It is now settled, however, in Massachusetts at least, that a vote by machine does not meet the constitutional requirement of a written vote. *Nichols* v. *Minton,* 196 Mass. 410, 82 N. E. 50, 12 L. R. A. (N. S.) 280.

This much at least can be gathered from these various decisions: That if the voting machine can effectuate the main purpose of the constitution its use will be approved and upheld by the court. Clearly, the cardinal purpose of the constitution in regard to elections is to secure a free and honest expression of choice at the polls with ample opportunity to the elector to vote a secret ballot. In so far as voting by machine fails to afford these privileges it is unconstitutional. Thus in *Helme* v. *Election Commissioners,* 113 N. W. 6, 149 Mich. 391, it was held that voting machines could not be used which did not afford the voter opportunity to vote for any desired combination of candidates unless in so doing he discloses his inten-